IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVN. APPLICATION NO.487 OF 2006

Mr. Kashinath A. Kaware. ... Applicants.

V/s.

The State of Maharashtra & Ors. ... Respondents.

Mr. R.N. Kachave for the Applicant.

Mr. M.S. Mhambne, APP for the Respondents.

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CORAM : S.C. DHARMADHIKARI,J.

14TH DECEMBER 2006.

P.C. :

1. The present Criminal Revision Application is at the instance of the original accused Kashinath. He was the Appellant alongwith his wife in Criminal Appeal No.408 of 2005. That Appeal was directed against the order of conviction and sentence recorded by J.M.F.C., Pune on 4th October 2005 in Criminal Case No.324 of 2001. The Trial Court convicted the accused No.1 Kashinath for offence punishable under Section 323 of I.P.C. and sentenced him to R.I. for one month and a fine of Rs.500/- in default simple imprisonment for 15 days. The Trial Court has also convicted the Appellant No.2 Vanita, wife of the Applicant No.1 before J.M.F.C. and sentenced to suffer R.I. for two months. That is reduced to S.I. till rising of the Court and payment of Rs.500/- and in default S.I. for 15 days. The prosecution version as narrated by the learned Additional Sessions Judge in Para 2 and 3 of his order

goes to show that the case of the complainant is that he was assaulted by both husband and wife and sustained injuries. It is in these circumstances, the learned J.M.F.C. concluded that both are guilty.

3. When the Applicants approached the Lower Appellate Court, the Appeal was heard in the absence of the State. The learned Public Prosecutor appearing for the State was absent throughout. The learned Additional District Judge has allowed the appeal partly by setting aside the conviction of the accused no.2 - wife of the Applicant for offence under Section 324 of Indian Penal Code and convicted her and the present Applicant for offence under Section 323. Their sentences awarded by the Trial Court have been modified. The directions were issued to destroy Muddemal property as also refund the excess amount of fine.

4. The Applicant husband is in Revision before me. The application has invoked this Court's Revisional jurisdiction challenging the order of the learned Additional Sessions Judge.

5. With the assistance of the learned Advocates, I have perused the said order and it has been noticed by me that the Appeal proceeded in the absence of the State. The learned A.P.P. appearing before the Appellate Court was absent all through out. The learned Judge proceeded

to dispose of Appeal only considering the submission of the Appellant.

6. After the Revision Application was argued for some time, the learned A.P.P. as also the Applicant submitted that it would be fair, just and proper if the Appeal preferred by the present Applicant is re-heard by the learned Appellate Judge on merits and in accordance with law. That would give proper opportunity to both sides. They can substantiate their pleas in adequate details.

7. The Revision Application is only by the husband but the appeal was a joint appeal by both the Appellants. It proceeded without the benefit of any arguments on behalf of the State. The State was not heard in support of the conviction and sentence of the Trial Court so also on the quantum of sentence. To say the least, these are unsatisfactory state of affairs and the manner of disposal of the Criminal Appeal leaves much to be desired. There was no grave urgency on the part of the Court below in disposing of a Appeal which was registered on 17the November 2005 in such a short span. The learned Lower Appellate Court would have been well advised in granting proper and complete opportunity to both sides and passed appropriate orders. It is not just that the Appellant - accused who are entitled to be heard fairly and properly but such a liberty also deserves to be granted to the prosecution. In such circumstances, on this ground alone,

the present Revision Application is allowed. The order under challenge dated 5th December 2006 in Criminal Appeal is set aside.

8. The Criminal Appeal is restored to the file of the learned Sessions Court at Pune for disposal afresh on merits and in accordance with law.

9. Needless to state that the Applicant who was enlarged on bail during the course of trial and has not been found misusing his liberty, shall be enlarged on bail during the pendency of appeal on same terms as were imposed by the Trial Court but with a fresh bond. The wife of the Appellant husband shall also be entitled to similiar relief. She is the second Appellant. Her conviction is also upheld by the Appellate Court. Since the Appeal is a joint appeal she is also enlarged on bail.

10. The learned Judge to whom the Criminal Appeal is assigned shall endeavour to dispose it of as early as possible and in any event within a period of three months from the receipt of this order. All contentions on both sides are expressly kept open and no opinion has expressed on the same.

(S.C. Dharmadhikari,J.)